

REMARKS

In the May 23, 2003 Office Action (hereinafter "Office Action"), Claims 7 and 18 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Additionally, Claims 1-29 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,794,207, to Walker et al. (hereinafter "Walker"). With the above-described amendments, Claim 1-29 remain pending in the application.

Pursuant to 37 C.F.R. § 1.111 and for the reasons set forth below, applicants request reconsideration and allowance of this application. Prior to discussing the reasons why applicants believe that the present application is in condition for allowance, a brief description of the present invention and the cited reference, Walker, is presented. However, the following discussion of the present invention and the teachings of Walker is not provided to define the scope or interpretation of any of the claims of this application. Instead, such discussions are provided to help the U.S. Patent and Trademark Office better appreciate important claim distinctions discussed thereafter.

1. Applicants' Invention

The present invention provides a system and method for matching a customer's offer with a quote from a product provider. In accordance with the present invention, two groups of providers are identified. The first group, a preferred provider group, includes providers that have negotiated for, or somehow obtained, preferential treatment in responding to consumer offers. In other words, preferred providers, i.e., are given a full opportunity to fulfill a consumer's offer before lesser-preferred, and non-preferred providers receive their opportunity. Thus, in regard to this first group of preferred providers, the present invention is not a first-to-respond/race system where providers must spend precious resources to continually monitor for an opportunities.

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Instead, with regard to the preferred provider group, this system is a preferential system, where preferred providers receive an exclusive opportunity to respond to a consumer's offer before other, non-preferred, providers.

Among the preferred provider group, each preferred provider is ranked, or ordered, according to preference. Preferred providers may negotiate for, or otherwise obtain, a higher preference ranking among the group of preferred providers. Accordingly, when a consumer's offer is received, a preferred provider with a higher preference ranking is given an exclusive opportunity to respond to the offer before any preferred provider with a lower preference ranking may respond.

The second group of providers, the non-preferred provider group, includes those providers that are not within the preferred provider group, i.e., receive no preferential treatment by the system. Non-preferred providers may satisfy a consumer offer only if all of the preferred providers fail to satisfy the consumer's offer.

As mentioned above, when a system adapted according to the present invention receives a consumer's offer, the system turns first to the preferred provider group. In order to ensure that preference order is maintained, the consumer's offer is presented to the preferred providers iteratively, beginning with the most preferred provider and continuing to the least preferred provider. At each iteration, the selected/current preferred provider is presented with the subject matter of the consumer's offer and quotes are obtained from that provider. If at least one quote from the current preferred provider satisfies the consumer's offer, the system completes the transaction between the consumer and the current preferred provider. Once the consumer's offer is satisfied, iteration to subsequent providers is terminated, thus no subsequent providers are presented with the consumer's offer.

Alternatively, if the preferred providers fail to satisfy the consumer's offer, the system then turns to the non-preferred providers. As the non-preferred providers have no

preference/ranking, the consumer's offer is presented to this group collectively, rather than iteratively. If more than one provider wishes to satisfy the consumer's offer, the system uses certain criteria to select a provider. For example, the selection may be based on any number of factors, including maximizing profitability to the system operator, best competitive price to the consumer, or first provider to satisfy the offer. Other rules or factors may also be utilized.

Utilizing the present invention, providers can negotiate for a preferred status among the preferred provider group. This provides an incentive to the providers to offer competitive products through the system. The system benefits by being able to maximize profits using the competitive offers from preferred providers, while still meeting the consumer's expectations. Consumers are also benefited as they receive the requested product at or below their offered price.

2. U.S. Patent No. 5,794,207 to Walker

Walker presents a method and apparatus for delivering buyer-driven commerce. Under the Walker system, the consumer submits a conditional purchase offer (CPO) for goods to a central controller. The central controller stores the CPO in a CPO database after the system has validated that the consumer is financially able to complete the purchase as requested. The CPO database may be organized according to the CPO's identified product in order to facilitate sellers in finding those offers that are relevant to them. Sellers are given access to examine/review the CPOs in the CPO database. **Any** seller able to provide a CPO's product may select to fulfill the CPO in the CPO database. To fulfill the consumer's CPO, a seller returns a response to the system indicating the seller's desire to fulfill the CPO. As more than one seller may respond to the same CPO at approximately the same time, the system also records the time at which an individual seller responds to a CPO. The seller that responds first to the CPO is selected to fulfill the CPO. In other words, the Walker system is a first-to-respond, or race, system.

Implicit with a first-to-respond/race system, such as disclosed by Walker, is the fact that a consumer's CPO is made available to all sellers at or about the same time. Thus, in clear contrast to the present invention, a consumer's CPO is not iteratively presented to individual sellers in a preferential order, give each seller a full opportunity to respond without immediate competition from other sellers. Hence, Walker would not, and does not, disclose ordering the sellers according to preference. In further contrast to the present invention, Walker does not disclose categorizing the sellers into groups of preferred sellers and non-preferred sellers, opting instead to select sellers from a single, non-delineated group in a first to accept/race system.

3. Rejection of Claims Under 35 U.S.C. § 112, Second Paragraph

Applicants have amended Claim 7 to more clearly identify what is meant by "supplier," by replacing the reference with "provider associated with the satisfying quote," as found in Claim 1. Applicants have also amended Claim 18 to correct an inadvertent typographical error, such that Claim 18 now correctly depends from Claim 17 instead of from Claim 16. Applicants submit that with these amendments, Claims 7 and 18 satisfy the requirements of 35 U.S.C. § 112, second paragraph. Accordingly, applicants respectfully request that the 35 U.S.C. § 112, second paragraph, rejections of Claim 7 and Claim 18 be withdrawn.

4. Rejection of Claims Under 35 U.S.C. § 102(b)

Claim 1

In regard to independent Claim 1, as amended, applicants respectfully submit that Walker fails to disclose each element of this independent claim. In particular, Walker fails to disclose the following elements:

"selecting a preferred provider from a group of preferred providers,"

"obtaining at least one quote for the product from the selected preferred provider,"

"if the at least one quote from the selected preferred provider does not satisfy the offer, repeatedly: selecting another preferred provider from the group of preferred providers; obtaining at least one quote for the product from the selected preferred provider; and evaluating the at least one quote from the selected preferred provider to determine if the at least one quote satisfies the offer; until the offer is satisfied or until the group of preferred providers is exhausted," and

"if the group of preferred providers is exhausted without satisfying the offer, attempting to satisfy the offer from a group of non-preferred providers."

As mentioned above, Walker does not disclose **selecting** a preferred provider from a group of preferred providers. There is no provider selection disclosed in Walker. In fact, Walker teaches away from selecting a provider. Through Walker's first-to-respond/race system, rather than selecting a seller, Walker permits any seller to respond to a consumer's CPO. (See Walker, col. 7, lines 34-35, and Walker col. 19, lines 23-25.)

Walker also fails to disclose a preferred provider group. The Office Action refers to Walker, col. 9, lines 17-30 for support for disclosing a preferred provider group. While this area of Walker discloses that only responses from sellers that are qualified to deliver the sought for product are accepted (see also Walker, col. 7, line 66 - col. 8, line 2), this clearly is not a "preferred" provider from a "preferred provider group", as described in the present invention. According to aspects of the present invention, preferred providers are those that receive preferential treatment, such as the exclusive, preferential opportunity to respond to a consumer's offer described above. Clearly, Walker does not describe such preferential treatment among sellers because Walker globally publishes the consumer's CPO and permits any qualified seller to respond to an offer. (See Walker, col. 7, lines 30-42.) Walker discloses authenticating sellers to ensure that they are qualified to deliver the sought for product. (Walker, col. 9, lines 19-26). However, this authentication/qualification cannot be viewed as the equivalent of the preferred

provider group of the present invention. In particular, assuming that an authenticated/qualified seller is the equivalent of a preferred provider, which applicants expressly deny, Walker refuses seller responses if the seller is not qualified (which would therefore correspond to a non-preferred provider). In clear contrast, the present invention solicits and accepts quotes from non-preferred providers after the group of preferred providers fails to satisfy the consumer's offer.

Applicants agree that Walker discloses obtaining a quote from a seller. However, as just described, Walker fails to disclose the positive step of selecting a provider, and also fails to disclose any preferred provider group. Thus, it necessarily follows that, while Walker apparently discloses obtaining a quote from a seller, Walker clearly fails to disclose obtaining a quote from **a selected preferred provider**.

Applicants assert that Walker also fails to disclose "repeatedly selecting another preferred provider from the group of preferred providers, obtaining at least one quote for the product from the selected preferred provider, and evaluating the at least one quote from the selected preferred provider to determine if the at least one quote satisfies the offer, until the offer is satisfied or until the group of preferred providers is exhausted." The Office Action refers to Walker, col. 19, lines 13-60 for support of repeating the process of selecting another preferred provider, obtaining a quote, and evaluating the quote until a satisfying quote is obtained or the group of preferred providers is exhausted. However, applicants assert that this passage in Walker instead discloses how the Walker system "publish[es] the purchase offer globally to potential sellers." Walker, col. 7, lines 33-34. More specifically, this passage discloses: that one or more sellers may respond to a CPO (lines 13-28), that responding sellers are authenticated to validate that they can supply the sought for product (lines 29-44), that the central server validates the status of the CPO (lines 45-54), and that sellers may transmit their responses directly to the buyer (lines 55-60). Clearly, this passage is patentably distinct from repeatedly selecting preferred providers from a

preferred provider group until the offer is satisfied or the group of preferred providers is exhausted, as recited in Claim 1.

Applicants further assert that Walker fails to disclose that a non-preferred provider group is selected after the preferred provider group is exhausted without a satisfying quote. As already mentioned above, Walker does not disclose grouping providers into categories of preferred providers and non-preferred providers. As further described above, Walker does not disclose exhausting the preferred providers searching for a satisfying quote. Thus, it follows that Walker cannot then further disclose obtaining quotes from non-preferred providers after the group of preferred providers is exhausted. Although the Office Action refers to Walker, Col. 22, lines 40-60, for disclosing these elements, and characterizes this passage as "sellers making counter-offers," this passage in Walker does not disclose key elements of Claim 1. In particular, this passage of Walker fails to disclose two separate groups of providers, a preferred provider group and a non-preferred provider group, and satisfying the offer from the non-preferred provider group after exhausting the preferred provider group. In fact, while Walker discloses that sellers may make counter-offers, the counter-offers come from the exact same group of sellers that could not satisfy the CPO. Clearly, this is not an example of two distinct groups of providers, as recited in Claim 1 of the present invention, namely, a preferred provider group and a non-preferred provider group.

For the reasons described above, applicants respectfully submit that Walker fails to disclose, teach, or suggest each element of independent Claim 1. Accordingly, applicants respectfully request that the 35 U.S.C. § 102(b) rejection of Claim 1 be withdrawn and the claim allowed.

Claims 2-11

Claims 2-11 depend from Claim 1. Accordingly, for at least the same reasons described above in regard to Claim 1, applicants respectfully submit that Walker fails to disclose each

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element of Claims 2-11, especially when read in conjunction with Claim 1. Accordingly, applicants request that the 35 U.S.C. § 102(b) rejections of Claims 2-11 be withdrawn and the claims allowed.

In addition to the above-described reasons, Claims 2-11 have additional recitations that further distinguish them from Walker, some of which are described below.

Claim 6

In regard to Claim 6, applicants further assert that Walker fails to disclose "evaluating the quotes provided by the selected preferred provider in descending order of value, from the highest quote to the lowest quote, and selecting the highest quote that satisfies the offer." The Office Action refers to Col. 19, lines 13-60 as support for rejecting this claim. However, as previously described above, this passage in Walker instead discloses that one or more sellers may respond to a CPO, that responding sellers are authenticated to validate that they can supply the sought for product, that the central server validates the status of the CPO, and that sellers may transmit their responses directly to the buyer. Applicants assert that neither this passage in Walker, nor any other passage in Walker, discloses evaluating the quotes in descending order of value, from highest to lowest, and selecting the highest quote that satisfies the offer.

For these additional reasons, applicants respectfully assert that Walker fails to disclose, teach, or suggest each element of Claim 6. Accordingly, applicants respectfully request that the 35 U.S.C. § 102(b) rejection of Claim 6 be withdrawn and the claim allowed.

Claim 9

In regard to Claim 9, applicants assert that Walker fails to disclose "each preferred provider includes a respective associated preferred criteria, and wherein evaluating the at least one quote from the selected preferred provider to determine if the at least one quote that satisfies the offer comprises determining if the quote satisfies the preferred criteria associated with the selected preferred provider".

As previously described, Walker fails to disclose a group of preferred providers. Thus, it further follows that Walker also fails to disclose that each preferred provider has an associated preferred criteria. As Walker fails to disclose preferred providers with associated preferred criteria, Walker cannot disclose determining whether a quote from the preferred provider satisfies the offer according to the preferred criteria.

The Office Action refers to Col. 19, lines 13-60 for support in rejecting this claim. However, as described above in regard to Claims 1 and 6, this passage of Walker fails to disclose any preferential group of providers, and applicants assert that this passage of Walker also fails to disclose preferred criteria associated with each preferred provider. As previously mentioned, Walker teaches away from utilizing preferred providers. Walker instead uses a global, non-delineated group of sellers in a first-to-respond/race system.

For these additional reasons, applicants respectfully assert that Walker fails to disclose, teach, or suggest each element of Claim 9. Accordingly, applicants respectfully request that the 35 U.S.C. § 102(b) rejection of Claim 9 be withdrawn and the claim allowed.

Claim 12

In regard to independent Claim 12, applicants respectfully assert that Walker fails to disclose each element of this claim. In particular, Walker fails to disclose the following elements:

"ranking each preferred provider in a plurality of preferred providers according to a preferred criteria,"

"selecting a highest ranked preferred provider from the plurality of preferred providers," and

"attempting to match the offer from the customer with the highest ranked preferred provider by determining whether a quote obtained from the highest

ranked preferred provider satisfied the preferred provider criteria associated with the highest ranked preferred provider."

As previously discussed in regard to Claim 1, Walker fails to disclose a group of preferred providers. Walker further fails to disclose ranking each preferred provider. The Office Action refers to col. 9, lines 5-30, col. 18, lines 27-31, and col.13, lines 35-38 as anticipating ranking each preferred provider according to a preferred criteria. However, applicants respectfully assert that col. 9, lines 5-30 instead disclose that qualified sellers, i.e., those who have been authenticated as able to deliver the sought after product, may peruse the CPO database and respond to the central server to accept the offer. Column 18, lines 27-31 disclose that the Walker system may implement its global broadcast of the CPOs to sellers, either individually or in groups. Column 13, lines 35-38 disclose that the seller response database tracks the sellers' responses, which may include a seller ID number. None of these passages discloses any preference criteria. Furthermore, none disclose that the sellers are ranked according to this preference criteria.

As Walker clearly fails to disclose ranking the preferred providers according to preference criteria, it follows that Walker must also fail to disclose selecting the highest ranked preferred provider. Indeed, Walker fails to disclose selecting any provider according to preference, as mentioned above in regard to Claim 1. The Office Action refers to col. 19, lines 13-28, and col. 20, lines 5-15, as anticipating "selecting a highest ranked preferred provider." However, col. 19, lines 13-28, simply indicate that one or more sellers may attempt to bind the customer to an offer, while Col. 20, lines 5-15, disclose that for some CPOs it is desirable to receive multiple responses from sellers. Thus, in clear contrast to the present invention, neither passage discloses a ranking or prioritization of the sellers and/or responses, and, in particular, neither passage discloses a highest ranked seller and/or response. Applicants, therefore, assert

that Walker fails to disclose selecting the highest ranked preferred provider to potentially fulfill a customer's offer.

For the reasons described above, applicants respectfully submit that Walker fails to disclose each element of independent Claim 12. Accordingly, applicants request that the 35 U.S.C. § 102(b) rejection of Claim 12 be withdrawn and the claim allowed.

Claims 13-23

Claims 13-23 depend from independent Claim 12. Accordingly, applicants submit that for the same reasons described above in regard to Claim 12, Walker fails to disclose each element of Claims 13-23, especially when read in conjunction with independent Claim 12. Applicants therefore request that the 35 U.S.C. § 102(b) rejections of Claims 13-23 be withdrawn and the claims allowed.

In addition to the above-described reasons, many of these claims have additional elements that further distinguish them from Walker. Some of these elements are described below.

Claim 15

In regard to Claim 15, applicants assert that Walker fails to disclose "attempting to match the offer with other preferred providers ... in descending order of the ranking associated with each preferred provider."

As discussed in regard to Claim 12, Walker fails to disclose any ranking among preferred providers. In addition, Walker further fails to disclose repeatedly attempting to match the offer with other preferred providers in a descending order of the ranking of each preferred provider (as already discussed above in regard to Claim 1.) Accordingly, applicants request that the 35 U.S.C. § 102(b) rejection of Claim 15 be withdrawn and the claim allowed.

Claim 16

In regard to Claim 16, Walker fails to disclose "attempting to match the offer with one of a plurality of non-preferred providers." As previously discussed in regard to Claim 1, Walker fails to disclose two delineated groups of providers: a preferred provider group and a non-preferred provider group. Walker further fails to disclose first attempting to satisfy the consumer's offer from the preferred providers, and subsequently attempting to satisfy the same offer from the non-preferred providers if no preferred provider satisfies the offer. Accordingly, applicants request that the 35 U.S.C. § 102(b) rejection of Claim 16 be withdrawn and the claim allowed.

Claim 24

In regard to independent Claim 24, applicants assert that Walker fails to disclose each element of this claim. In particular, Walker fails to disclose the following recitations:

"a travel server component configured to obtain at least one quote associated with each provider in a plurality of providers to provide the product at a cost, the plurality of providers comprising at least two groups: a preferred providers group and a non-preferred providers group, each preferred provider having a distinct preference ranking," and

"the online travel service exchanger being further configured to attempt to match the offer with each preferred provider in the preferred providers group in descending order of preference."

As previously discussed, Walker fails to disclose two distinct groups of providers, specifically a preferred provider group and a non-preferred provider group. Also previously discussed, Walker fails to disclose preference rankings among the group of preferred providers. As Walker fails to disclose preference rankings, it follows, and applicants assert, that Walker also fails to disclose that each preferred provider has a distinct preference ranking. Also

previously discussed, Walker fails to disclose an online travel service exchanger that attempts to repeatedly match an offer from providers in the preferred providers group in descending order according to preference.

While Walker discloses that a CPO is satisfied by the first qualified seller to respond, applicants assert that this is patentably distinct from attempting to match an offer with each preferred provider according to their distinct preference ranking. As discussed above, an implicit aspect of a preference ranking associated with each preferred provider is that the preferred provider receives an exclusive opportunity to respond to a consumer's offer, without concern for being the first to respond. Thus, in contrast to the present invention, Walker completely fails to disclose any preferential treatment, instead disclosing a system that simply awards the consumer's offer to the fastest to respond.

For the reasons described above, applicants respectfully assert that Walker fails to disclose each element of independent Claim 24. Accordingly, applicants request that the 35 U.S.C. § 102(b) rejection of Claim 24 be withdrawn and the claim allowed.

Claims 25-29

Claims 25-29 depend from Claim 24. Accordingly, for the same reasons described above in regard to Claim 24, applicants assert that Walker fails to disclose each element of these claims, especially when read in conjunction with independent Claim 24. Accordingly, for the same reasons described above, applicants request that the 35 U.S.C. § 102(b) rejection of Claims 25-29 be withdrawn and the claims allowed.

CONCLUSION

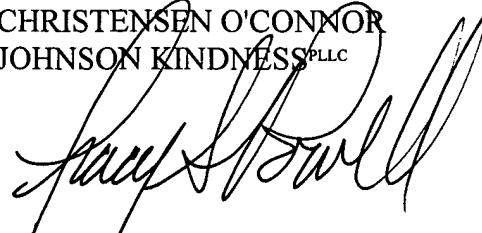
In view of the foregoing remarks it is believed that the present application is in condition for allowance. Accordingly, reconsideration and reexamination of the application, as amended,

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are requested. Allowance of Claims 1-29 at an early date is solicited. If the Examiner has any questions, she is invited to call applicants' attorney at the number listed below.

Respectfully submitted,

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Date:

August 25, 2003

Pari A. Seaver

TSP:lal